

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

**8:18CV241**

**MEMORANDUM  
AND ORDER**

This matter is before the court on its own motion. Respondent filed a Motion to Dismiss on January 31, 2019. ([Filing No. 15](#).) A motion to dismiss was not one of the responses specifically enumerated in the court's progression order ([filing no. 7](#)) entered upon initial review of the petition, but it is a response permitted under the Rules Governing Section 2254 Cases. *See Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts* (where petition is not dismissed upon preliminary review, judge required "to order the respondent to file an answer, motion, or *other response*"); *see also Ebert v. Clarke*, 320 F. Supp. 2d 902, 906 n.9 (D. Neb. 2004) (recognizing attorney general's practice in § 2254 cases of filing motions to dismiss after respondent ordered on initial review to answer or otherwise respond, including motions to dismiss based on successive petition grounds). Accordingly, the court shall grant Petitioner thirty days from the date of this order to file and serve a brief in opposition to Respondent's motion to dismiss.

IT IS THEREFORE ORDERED that:

1. Petitioner shall have Petitioner shall have until **March 4, 2019**, to file a brief in opposition to the motion to dismiss.

2. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **March 4, 2019**: check for Petitioner's brief in opposition to motion to dismiss.

Dated this 1st day of February, 2019.

BY THE COURT:

s/ *Richard G. Kopf*  
Senior United States District Judge